

DAEO may certify nomination reports required to be filed by a reporting individual who is nominated by the President to a position requiring the advice and consent of the Senate. For all other reports, the DoD component DAEO may delegate this responsibility to other officials within the DoD component.

(2) *Disposition.* The SF 278 and a complete record of all action taken thereon shall be retained for a period of six years by the DoD component DAEO or designee, and a copy of the report shall be forwarded to OGE, when required. After the six-year period, the report shall be destroyed, unless needed in an ongoing investigation. In the case of a reporting individual who filed a report as a nominee and was not subsequently confirmed by the Senate, the report shall be destroyed one year after the reporting individual is no longer under consideration by the Senate.

(i) *Public availability of reports.* SF 278s must be made available for public inspection 30 days after the reports are filed unless otherwise exempted under law. OGE Form 201, "Request to Inspect or Receive Copies of SF 278, Financial Disclosure Report," shall be filed by a requestor before inspecting an SF 278.

(j) *Penalties—(1) Action within a DoD component.* The Head of the DoD component may take appropriate action, including adverse action, in accordance with applicable laws or regulations, against any reporting individual who fails to file an SF 278 or who falsifies or fails to report required information.

(2) *Action by the U.S. Attorney General.* The U.S. Attorney General may bring a civil action in the U.S. District Court against any individual who knowingly and willfully falsifies or fails to file or report information required to be reported. The court may assess a civil penalty. Knowing and willful falsification of information required to be filed may also result in criminal prosecution under 18 U.S.C. 1001, leading to a fine or imprisonment of not more than five years, or both.

(3) *Misuse of reports.* (i) The U.S. Attorney General may bring a civil action against an individual who obtains or uses an SF 278 filed under the Ethics in Government Act, Public Law 95–521

(5 U.S.C. App.), for the following reasons:

- (A) Any unlawful purpose;
- (B) Any commercial purpose other than by news and communications media for dissemination to the general public;
- (C) Determining or establishing the credit rating of any individual;
- (D) Directly or indirectly, for the solicitation of money for any political, charitable or other purpose.

(ii) The court in which the action is brought may assess a penalty against a person in any amount, not to exceed \$10,000. This shall be in addition to any other remedy available under statutory or common law.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§ 84.22 Confidential financial disclosure report (SF 450).

(a) *Individuals required to file.* (1) *Covered positions.* For purposes of this section, unless required to file an SF 278 or unless expressly exempted, the following individuals are in "covered positions" and are required by 5 CFR part 2634 to file initial and annual SF 450 through their supervisor to their Ethics Counselor as set out in paragraph (f) of this section:

(i) Commanding officers, heads and deputy heads, and executive officers of:

(A) Navy shore installations with 500 or more military and civilian DoD employees (including foreign nationals and indirect personnel regularly attached but excluding personnel attached for temporary duty); and

(B) All Army, Air Force, and Marine Corps installations, bases, air stations or activities.

(ii) Special Government employees, except the following categories of DoD employees who are required to file reports only when specifically requested to do so by their supervisor:

(A) Physicians, dentists, and allied medical specialists engaged only in providing services to patients;

(B) Veterinarians providing only veterinary services;

(C) Lecturers participating only in educational activities;

(D) Chaplains performing only religious services;

(E) Individuals in the motion picture or television fields who are utilized only as narrators or actors in DoD productions;

(F) Reservists on active duty for less than 30 consecutive days during a calendar year; and

(G) Members of selection panels for ROTC candidates.

(iii) DoD employees classified at GS/GM-15 or below under 5 U.S.C. 5332 or a comparable pay level under other authority, and members of the military below the grade of O-7 as follows:

(A) When the official responsibilities of such DoD employees require them to participate personally and substantially through decision or exercise of significant judgment in taking an official action for contracting or procurement, administering or monitoring grants, subsidies, licenses or other Federally conferred financial or operational benefits, regulating or auditing any non-Federal entity, or other activities in which the final decision or action may have a direct and substantial economic impact on the interests of any non-Federal entity;

(B) Any DoD employee serving in a position in which his supervisor determines that the duties and responsibilities of the position require the DoD employee to file such a report to avoid an actual or apparent conflict of interest and to carry out the purpose of any statute, Executive Order, or regulation applicable to or administered by that reporting individual;

(iv) Individuals who are detailed to positions described in paragraph (a)(1)(iii) of this section.

(v) Individuals serving on detail under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371-3376.

(2) *Exclusion.* (i) Any DoD employee or group of DoD employees may be excluded from all or a portion of the reporting requirements when the DoD component Head or designee determines that a report is unnecessary because of the remoteness of any impairment to the integrity of the Federal Government, because of the degree of supervision and review of the DoD employee's work, or because the use of an

alternative procedure is adequate to prevent possible conflicts of interest. Any alternative procedure must be approved in writing by OGE.

(ii) DoD employees who are not employed in contracting or procurement and who have decision making responsibilities regarding expenditures of less than \$2,500 per purchase and less than \$25,000 cumulatively per year are excluded from the requirement to file the SF 450. However, Agency Designees may require such DoD employees, in individual cases, to file the SF 450. Such DoD employees remain subject to conflict of interest statutes and regulations.

(b) *Information on covered positions.* (1) The directors of personnel offices are responsible for providing the following information to their DoD component DAEs or designees they service:

(i) Immediately upon the appointment of covered DoD employees, the name, position, organization and entrance-on-duty date of DoD employees required by their supervisor to file a new entrant SF 450.

(ii) By October 3 of each year, a list of the names, positions and organizations, when applicable, of DoD employees who are required to file an annual SF 450.

(2) Coordination is required as follows:

(i) Administrative officers (or equivalent) of each organization shall coordinate with the supervisors within their organization, in consultation with the DoD component DAE or designee, to update the list of annual reporting individuals in their organization and report any additions or deletions to the concerned Ethics Counselor by October 31 of each year. In addition, it is the administrative officers' responsibility to ensure that any new positions are evaluated to determine whether such reports are required; or

(ii) The directors of personnel offices shall coordinate with Ethics Counselors and supervisors to ensure that position or billet descriptions of reporting individuals described in paragraph (a) of this section contain a statement that an SF 450 must be filed.

All new or revised position or billet descriptions shall be reviewed to determine whether such reports are required.

(c) *Notification of requirement to file.* DoD component DAEOs or designees shall provide appropriate notices and instructions to ensure the timely preparation of the reports and submission to their supervisors and their Ethics Counselors for review and filing.

(d) *Time of filing*—(1) *New entrant reports.* (i) Except for a special Government employee, a reporting individual shall submit an SF 450 with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor not later than 30 days after assuming duties in a covered position. Upon transfer or reassignment from one covered position to another, a reporting individual shall submit a copy of his previous report to the appropriate supervisor of the new position.

(ii) A special Government employee shall submit an SF 450 with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor before assuming duties in a covered position. A special Government employee whose appointment is renewed shall file a new entrant report for the preceding 12 months prior to his reappointment. A special Government employee whose appointment exceeds one year shall file a new entrant report on the anniversary of his appointment.

(2) *Annual reports.* A reporting individual (except a special Government employee) who was employed at least 61 days during the preceding reporting period must submit an SF 450 to his Ethics Counselor by November 30 of each year covering the preceding 12 months (or any portion thereof not covered by a new entrant report), with information current as of September 30 of that year. A reporting individual who is reassigned or transferred from one covered position to another during the reporting period shall file an annual report whether or not he was employed in that position for 61 days.

(3) *Extension of filing deadline.* (i) When required by reason of duty assignment, infirmity, or other good cause affecting a reporting individual,

the DoD component DAEO or designee may grant an extension of the filing deadline, not to exceed 60 days for annual reports or 90 days for new entrant reports.

(ii) Requests for extensions shall be submitted in writing.

(iii) Each annual reporting individual is automatically granted a 30 day extension by this part to make the reporting deadline November 30 as stated in paragraph (d)(2) of this section. This automatic extension need not be annotated on an individual report. Any other extension shall be noted.

(e) *Content of report.* (1) Instructions for completing the SF 450 are included on the report. See instructions at 5 CFR 2634.907 and 2634.908 for additional guidance or contact the local Ethics Counselor.

(2) A complete report is required even though no changes have occurred since the last submission.

(3) A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate, even if it limits disclosure to the reporting individual.

(f) *Chain of submission.* A reporting individual shall submit his SF 450 through his supervisor to his Ethics Counselor. It is the responsibility of the reporting individual to ensure that an annual report is filed by November 30.

(g) *Review.* (1) Upon receipt of an SF 450, the supervisor of the reporting individual shall provide an initial review of the report using the criteria set forth in paragraph (g)(2) of this section and forward it with any comments to the local Ethics Counselor for further review.

(2) The Ethics Counselor shall review each report to determine that:

(i) Each item is completed; and
(ii) No interest or position disclosed on the report violates or appears to violate:

(A) Any applicable provision of Chapter 11 of title 18, United States Code;

(B) The Ethics in Government Act of 1978, Public Law 95-521 (5 U.S.C. App.), and implementing regulations;

(C) Executive Order 12674 and implementing regulations; or

(D) Any other related laws or regulations applicable to DoD employees of the agency.

(3) The Ethics Counselor shall not sign and date the report until the determinations described in paragraph (g)(2) of this section are made. The reports are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report.

(4) If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

(i) When the Ethics Counselor amends or revises a report based on additional information obtained from the reporting individual, he shall initial the amendment or revision and make a note of the source of the information in the comment section of the report. For example, if the Ethics Counselor adds to a report that a certain fund is an expected investment fund based on a telephone conversation with the reporting individual, he shall number and initial the change on Schedule A and add a notation in the comment section of the report such as, "1. per telecon with Mr. Doe on June 16, 1992" and initial the comment.

(ii) When a substantial amount of information is missing from the report, it shall be returned to the supervisor for his evaluation in accordance with the standards set forth in paragraph (g)(2) of this section with instructions to return it to the Ethics Counselor with any additional comments or supplementary information.

(5) If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, then the Ethics Counselor shall sign and date the report.

(6) If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, but that there are financial interests in non-Federal entities doing or seeking business with DoD, then the Ethics Counselor may issue a memorandum of caution to the reporting individual and shall sign and date the report.

(7) If the Ethics Counselor disagrees with the supervisor's evaluation that no item violates or appears to violate applicable laws or regulations, then the Ethics Counselor shall do the following:

(i) Notify the reporting individual, in writing, of the preliminary determination;

(ii) Afford the reporting individual a reasonable opportunity for an oral or written response; and

(iii) Determine, after considering any response, whether or not the reporting individual is in compliance with applicable laws and regulations. If the Ethics Counselor concludes that the report does fulfill the requirements, he shall sign and date the report. If the Ethics Counselor determines that it does not, he shall:

(A) Notify the reporting individual of the conclusion;

(B) Afford the reporting individual an opportunity for personal consultation, if practicable;

(C) Determine what remedial action shall be taken to bring the reporting individual into compliance; and

(D) Notify the reporting individual, in writing, of the remedial action required, indicating a date by which that action must be taken;

(E) Ensure that the supervisor of the reporting individual is notified of the required remedial action and date by which that action must be taken.

(8) Except in unusual situations, which must be documented fully to the satisfaction of the Ethics Counselor, remedial action shall be completed within 90 days from the date the reporting individual was notified that the action is required.

(9) Remedial steps, in accordance with 5 CFR 2634.605-2635.607 may include the following measures:

(i) Divestiture;

(A) Any DoD employee or the spouse, minor or dependent child of a DoD employee may be issued a Certificate of Divestiture by the Director, OGE, upon a determination that such divestiture is reasonably necessary to comply with 18 U.S.C. 208 or any other Federal Government conflict of interest statute, regulation, rule, or Executive order;

(B) If obtained before the sale, the Certificate of Divestiture allows for the non-recognition of capital gains that result upon the sale of property to comply with conflict of interest requirements if the property is rolled over into property permitted by OGE. See 5 CFR 2634.1001 for additional guidance;

(C) The following items must be submitted to the Director, OGE, by the DoD component DAE0:

(1) A copy of the written request from the individual to the DoD component DAE0 to seek certification in the case of the property to be divested;

(2) A copy of the latest SF 278 or SF 450;

(3) A detailed description of the specific property in which divestiture is contemplated;

(4) A complete statement by the DoD component DAE0 or designee of the facts and circumstances relevant to the requirement for divestiture and an explanation of the rules that apply to the requirement for divestiture;

(5) An analysis and recommendation as to whether the certificate should be granted.

(D) The Director, OGE, will issue a Certificate of Divestiture when divestiture is reasonably necessary to comply with conflict of interest requirements.

(ii) Disqualification in accordance with 5 CFR 3601.105;

(iii) Limitation of duties;

(iv) Transfer or reassignment;

(v) Resignation;

(vi) Exemption under 18 U.S.C. 208(b)(1) or (b)(3);

(vii) Establishment of a qualified blind trust

(10) When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made on the SF 450. The Ethics Counselor shall then sign and date the SF

450 and dispose of it in accordance with paragraph (h) of this section.

(11) If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the agency designee for appropriate action, with an information copy to the DoD component DAE0.

(12) All reports shall be reviewed within 60 days after the date of filing and the Ethics Counselor shall record the date of the initial review. After the initial review, the Ethics Counselor shall obtain additional information, as necessary, seek remedial action, or sign and date the report.

(h) *Disposition.* The SF 450 and a complete record of all action taken thereon shall be retained for a period of six years in a central location within the agency, command or activity to which the reporting individual was assigned at the time of filing, after which they shall be destroyed, unless needed in an ongoing investigation.

(i) *Privacy Act.* The SF 450 is a confidential report. Accordingly, the reports are protected by the Privacy Act, 5 U.S.C. 552 and are exempt from being released to the public under the Freedom of Information Act, 5 U.S.C. 552(b)(3)(A) and (B), (b)(4) and (b)(6).

(j) *Status reports.* (1) Not later than December 15 of each year, Ethics Counselors shall prepare a consolidated status report concerning the annual filing of the SF 450. The status report shall be sent through the head of the DoD component command or organization to the respective DoD component DAE0 or designee and shall contain the following information:

(i) The number of individuals required to file an annual SF 450; and

(ii) The number of individuals who have not filed an SF 450 as of November 30.

(2) Subsequent to December 15, monthly reports may be required by the DoD component DAE0 to be filed for those organizations which have not received an SF 450 from all reporting individuals required to file, until 100% compliance has been achieved. These monthly reports shall be forwarded as described in paragraph (j)(1) of this section.

(k) *Penalties*—(1) *Administrative penalties*. Anyone failing to file a report, or falsifying or failing to file required information, may be subject to disciplinary action by the employing organization, including such measures as suspension of consideration for appointment, reassignment of duties and termination of employment.

(2) *Criminal liability*. Anyone who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§ 84.23 Report of DoD and defense related employment (DD form 1787).

(a) *Individuals required to file*. Each civilian DoD employee of a DoD component who meets the statutory criteria is required by 10 U.S.C. 2397 to file a DD Form 1787,²¹ "Report of DoD and Defense Related Employment," with his Ethics Counselor. A DoD employee meets the criteria if he:

(1) Is employed at a pay rate equal to or greater than the minimum rate for a GS/GM-13;

(2) Within the two-year period prior to the effective date of service or employment with the DoD component, was employed by a defense contractor who, during the preceding one-year period, was awarded \$10 million or more in defense contracts; and

(3) Was employed by or performed services for the defense contractor and at any time during that year received compensation of or was salaried at a rate of \$25,000 per year or more at any time during employment.

(i) Compensation is received by an individual if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that individual.

(ii) A rate of \$25,000 per year equates to \$12 per hour.

(b) *Time of filing*. DoD employees shall file a DD Form 1787 with their local Ethics Counselors within 30 days

of entering on duty with the DoD component.

(c) *Review*. (1) When a report is filed, the Ethics Counselor shall review the DD Form 1787 to determine whether:

(i) Each item is completed and sufficient information is provided; and

(ii) Whether the information indicates any violation or apparent violation of any of the conflicts of interest, standards of conduct, procurement integrity, or related laws and regulations.

(2) The Ethics Counselor need not audit the report. Disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, it is expected that the Ethics Counselor will resolve any apparent violations to ensure there are no actual violations.

(3) If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics counselor.

(4) When the Ethics Counselor has completed the review and accomplished any necessary remedial action, the Ethics Counselor shall sign and date the report and dispose of it in accordance with § 84.23(d).

(5) If the Ethics Counselor concludes that the reporting individual is not in compliance with applicable laws or regulations, the Ethics Counselor shall:

(i) Notify the reporting individual, in writing, of the preliminary determination;

(ii) Afford the reporting individual an opportunity for personal consultation, if practicable;

(iii) Determine what remedial action should be taken to bring the reporting individual into compliance; and

(iv) Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken, normally within 90 days.

(6) When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be

²¹ Copies are available for DoD Standards of Conduct Office, Office of General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600.